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09/101,601	09/14/1998	ADRIEN GALET	GSQ2017	9849

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EXAMINER

LE, HUYEN D

ART UNIT

PAPER NUMBER

2643

DATE MAILED: 11/28/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/101,601

Applicant(s)

Galet et al.

Examiner

HUYEN LE

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Sep 11, 2001
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2, and 5-12 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 5-7, and 9-11 is/are rejected.
- 7) ☒ Claim(s) 12 is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirements.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: _____

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DETAILED ACTION

1. The indicated allowability of claims 2, 5-6 and 11 is withdrawn in view of the reference(s) to Zuckerman. Rejections based on the cited reference(s) follow.

Specification

2. The abstract of the disclosure is objected to because the abstract should be put on a separate sheet. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-2, 5-7, 9 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Zuckerman et al. (U.S. patent 5,404,577).

Regarding claims 1 and 7, Zuckerman teaches a protective headgear which comprises an external principle shell (20, 41) made of rigid material (col. 5, lines 64-66). As shown in figures 2, 3 and 24, the shell includes two lateral wall portions which cover and correspond to the zones of the ears of the users. Zuckerman further shows the connection means to attach and position the case (56, 104, 300), the acoustic pick up (54) and the speaker (55) inside of the shell in the

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zones as claimed (figures 2, 3 and 24) the headgear as claimed. Zuckerman further teaches the connection means which includes a removable connection (63, 111) as claimed.

Regarding claim 2, Zuckerman teaches a protective headgear which comprises a case (56, 57, figures 4, 5 and 300 in figures 21, 24). The case has an acoustic pick-up (54, 54A) and a speaker (55, 55C) and includes an extension that defines a connection tab (63 in figures 2, 5 and 302 in figure 21) as claimed.

As broadly claimed, Zuckerman shows an external principle shell (41, 42) which includes the lateral wall portions covering and corresponding to zones occupied by ears of a user (figures 2, 3 and 24).

Further, Zuckerman shows connection means (see the connection means for the hinge 63 in figures 2, 5 and 48 in figure 24) to attach and position the case, the speaker and the acoustic pick-up inside the headgear in the zones as claimed. As shown and disclosed, the connection means in Zuckerman includes a removable connection between the case and the headgear.

Regarding claim 5, as shown in figures 3 and 24, the lateral guide in Zuckerman is integral with a support piece (the lateral guide for hinge 63 or the mounting member 48 is formed as a unit with the support piece of the headgear) which is attached to the external shell of the headgear.

Regarding claim 6, Zuckerman shows the deformable lining as claimed (figures 3, 24, 25).

Regarding claim 9, Zuckerman shows two cylindrical slots as claimed (figures 4 and 12).

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Regarding claim 11, Zuckerman teaches a protective headgear which comprises a shell (20, 41), and a deformable structure (46). As broadly claimed, the deformable structure and the shell define ear receiving areas (see the headgear in figures 2-3, 24).

Zuckerman further teaches at least one tab receiving guide (col. 18, lines 19-36) which is mounted to the interior of the shell adjacent to the ear receiving areas, and a case (300) which has a tab. As shown in figures 2, 3, 21, 24, a microphone/speaker assembly is mounted in the case (300), and a transmitter/receiver assembly (52) is electrically connected with the microphone/speaker assembly.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was

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made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 1-2, 5-7 and 9-11, as interpreted in a different manner, are rejected under 35 U.S.C. 103(a) as being unpatentable over Zuckerman et al. (U.S. patent 5,404,577).

Regarding claims 1 and 7, Zuckerman teaches a protective headgear which comprises an external principle shell (20, 57, 106), and connection means to attach and position the case (56, 104, figures 4 and 12), the acoustic pick up (54) and the speaker (55) inside the headgear as claimed. Zuckerman further teaches the connection means which includes a removable connection (63, 111) as claimed.

Zuckerman does not specifically teach the flame retardant earflap (106) covering the ears which are made of rigid material. However, in another embodiment, Zuckerman teaches that the flame retardant shroud (300) is made of rigid flame retardant material (col. 18, lines 21-22).

Therefore, it would have been obvious to one skilled in the art to provide the earflap (106) of Zuckerman which is made of rigid material for better protecting the ears of the wearer from heat and flame.

Regarding claims 1 and 7, as interpreted in a different manner, Zuckerman teaches a protective headgear which comprises an external principle shell (20, 41, 45) made of rigid material (col. 5, lines 64-66), and connection means to attach and position the case (56, 104, figures 4 and 12), the acoustic pick up (54) and the speaker (55) inside the headgear as claimed. Zuckerman

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further teaches the connection means which includes a removable connection (63, 111) as claimed.

Zuckerman does not specifically show the case (104) which is disposed in the inside of the shell (20, 41, 45) that covers the ear zones of a user as claimed. However, Zuckerman does show the case (104) which is positioned inside the flap (106) of the headgear (20).

Since Zuckerman does not restrict to any type of the headgear (col. 11, lines 52-54); it therefore would have been obvious to one skilled in the art to position the case (104) inside the surface of any type of the headgear such as the headgear with the shell covering the ears for greater application.

Regarding claim 2, as interpreted in a different manner, Zuckerman teaches a protective headgear which comprises a case (56, 57, figures 4, 5 and 300 in figures 21, 24). The case has an acoustic pick-up (54, 54A) and a speaker (55, 55C) and includes an extension that defines a connection tab (63 in figures 2, 5 and 302 in figure 21) as claimed.

Further, Zuckerman shows connection means (see the connection means for the hinge 63 in figures 2, 5 and 48 in figure 24) to attach and position the case, the speaker and the acoustic pick-up inside the headgear in the zones as claimed. As shown and disclosed, the connection means in Zuckerman includes a removable connection between the case and the headgear.

Zuckerman does not specifically disclose the external principle shell (41, 42) which includes two lateral wall portions completely covering the ears of the user. However, Zuckerman does not restrict to any type of the headgear (col. 11, lines 52-54); it therefore would have been

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obvious to one skilled in the art to provide any type of the headgear such as the headgear with the shell covering the ears for greater application.

Regarding claim 5, as shown in figures 3 and 24, the lateral guide in Zuckerman is integral with a support piece (the lateral guide for hinge 63 or the mounting member 48 is formed as a unit with the support piece of the headgear) which is attached to the external shell of the headgear. Also, the Applicant should note that constructing a formerly integral structure in various elements involves only routine skill in the art.

Regarding claim 6, Zuckerman shows the deformable lining as claimed (figures 3, 24, 25).

Regarding claim 9, Zuckerman shows two cylindrical slots as claimed (figures 4 and 12).

Regarding claim 10, Zuckerman does not specifically disclose the acoustic pick up (54) which is located above the speaker as claimed.

However, it would have been obvious to one skilled in the art to position the acoustic pick up in any place of the housing (104) such as the location above the speaker for positioning in a better place to pick up sound waves.

Regarding claim 11, as interpreted in a different manner, Zuckerman teaches a protective headgear which comprises a shell (20, 41), and a deformable structure (46). Zuckerman further teaches at least one tab receiving guide (col. 18, lines 19-36) which is mounted to the interior of the shell adjacent to the ear receiving areas, and a case (300) which has a tab. As shown in figures 2, 3, 21, 24, a microphone/speaker assembly is mounted in the case (300), and a

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transmitter/receiver assembly (52) is electrically connected with the microphone/speaker assembly.

Zuckerman does not specifically show the shell (20, 41, 45) and the deformable (46) that covers the ear zones of a user. However, Zuckerman does show the case (56, 104) containing microphone and speaker which is positioned inside the flap (106) of the headgear (20).

Since Zuckerman does not restrict to any type of the headgear (col. 11, lines 52-54); it therefore would have been obvious to one skilled in the art to position the case (56, 104) inside the surface of any type of the headgear such as the headgear with the shell and the deformable covering the ears for greater application.

Allowable Subject Matter

7. Claim 8 is allowed.

8. Claim 12 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

9. Applicant's arguments with respect to claims 1-2, 5-7 and 9-11 have been considered but are moot in view of the new ground(s) of rejection.

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Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huyen Le whose telephone number is (703) 305-4844. The examiner can normally be reached on Monday through Friday from 9:30AM to 6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curtis Kuntz, can be reached on (703) 305-4708.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-4700.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231


or faxed to:

(703) 308-6306, (for formal communications intended for entry)

Or:

(703) 308-6296 (for informal or draft communications, please label
"PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive,
Arlington, VA., Sixth Floor (Receptionist).


HL
November 15, 2001


HUYEN LE
PRIMARY EXAMINER